## REMARKS

The Examiner is requiring restriction to one of the following groups:

Group I: Claims 23-32, drawn to a method of fabricating a magnetic head; and

Group II: Claims 1-22, drawn to a magnetic head element for recording/reproducing apparatus.

Applicants have elected Group II, claims 1-22, with traverse.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required. (M.P.E.P. § 803). The burden of proof is on the Examiner to provide reasons and/or examples, to support any conclusion in regard to patentable distinctions. (M.P.E.P. § 803). Applicants respectfully traverse the restriction requirement on the grounds that the Examiner has not carried the burden of providing any reasons and/or examples to support any conclusion that the claims of the restricted groups are patentably distinct.

The Examiner has categorized the relationships between Groups I and II as process of making and product made. Patentable distinctness may be shown if either or both of the following can be shown: (A) that the process as claimed is not an obvious process of making the product and the process as claimed can be used to make other and different products; or (B) that the product as claimed can be made by another and materially different process (M.P.E.P. § 806.05(f)). The Examiner asserts that the claimed article can be fabricated using steps, which do not follow the same chronological order of the claimed steps and/or may omit certain step(s).

The Examiner's assertions, however, fail to support the criteria required under § 806.05(f)), since a mere rearrangement of the order of the claimed process steps is not evidence that the claimed article "can be made by <u>another</u> and <u>materially</u> different process" (emphasis added). As such, the Examiner's assertion is merely a restatement of the

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Examiner's conclusion that the inventions are patentably distinct, which provides insufficient reasons to support a restriction of the inventions.

Accordingly, the restriction is believed to be improper. The withdrawal of the requirement is respectfully requested.

Respectfully submitted,

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